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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,
vs.
VIPER CAPITAL MANAGEMENT, LLC,
COMPASS CAPITAL MANAGEMENT, LLC,
and EDWARD SEWON EHEE,
Defendants,
and
COMPASS WEST FUND, LP, VIPER
FOUNDERS FUND, LP, VIPER INVESTMENTS,
ALBERT EHEE, ROBERT EHEE and
JENNIFER EHEE,
Relief Defendants.

Civil Action No.
C-06-6966-SI

(Related to Case Nos. C-07-
2507-SI, C-07-2508-SI and
C-07-2509-SI)

**PLAINTIFF SECURITIES
AND EXCHANGE
COMMISSION'S REPLY
BRIEF IN SUPPORT OF
ITS MOTION TO
WITHDRAW
BANKRUPTCY
REFERENCE**

Date: June 22, 2007
Time: 9:00 a.m.
Judge: Susan Illston
Courtroom: 10

REPLY BRIEF**I. Withdrawing the Bankruptcy Reference Will Promote A Quick Resolution.**

Plaintiff Securities and Exchange Commission ("Commission") has moved (in proceedings designated as Case Nos. C-07-2507-SI, C-07-2508-SI and C-07-2509-SI) to withdraw the reference to bankruptcy court of three *involuntary* proceedings initiated by the Roosevelt Fund, L.P. ("Roosevelt Fund") against defendants Edward Ehee, Compass Fund Management, LLC and Compass West Fund, LLP. Besides fostering judicial economy and consistency, the current motion is predicated upon (i) the Commission's statutory right to complete this proceeding without interference by any bankruptcy filing and (ii) the Court's prior asset freeze over Edward Ehee's only substantial asset – his residence in the Oakland Hills area. 11 U.S.C. § 362(b)(4); *S.E.C. v. Bilzerian*, 131 F. Supp. 2d 10, 14 (D.D.C. 2001). The Commission understands from the parties' prior telephone calls that the Roosevelt Fund opposes the motion because it believes that its bankruptcy petitions have stayed the Commission's action and that a bankruptcy court should resolve potential fraudulent conveyance claims before the Commission's action moves forward again.¹

Given the Commission's and the Roosevelt Fund's contrary positions, the current motion presents a simple practical choice: (1) grant the current motion so that the Commission's case can be completed quickly or (2) deny the motion and risk delays and inconsistent rulings due to the bankruptcy court's jurisdiction over the same parties and assets. In light of the procedural status of this case and the bankruptcy cases, the prompt resolution of the Commission's case should take precedence.

The Commission filed this action in November 2006 and obtained a temporary restraining order and asset freeze. The Court subsequently entered a preliminary injunction and set a remedies trial in this case for August 13, 2007. Whether by settlement or further litigation, the Commission's action will therefore soon lead to entry of a final judgment against all defendants and

¹ The Roosevelt Fund considers its own civil case against those three defendants in this Court to be stayed pending the outcome of its three involuntary bankruptcy petitions in bankruptcy court.

1 relief defendants.² Under the asset freeze, the net sales proceeds from Edward Ehee's residence will
 2 go into the court's registry for distribution to the investors following entry of judgment.

3 By comparison, the three involuntary bankruptcy proceedings are still at "square one."
 4 Those bankruptcy proceedings were filed well after the Commission obtained a preliminary
 5 injunction and asset freeze in this Court, and on the eve of scheduling the remedies trial for the
 6 Commission's claims. There has been no order for relief in the two of the bankruptcy proceedings
 7 and no identification of available assets – with the exception of the Edward Ehee's residence.
 8 Although it believes that the bankruptcy proceedings can function as a forum for bringing fraudulent
 9 conveyance claims, the Roosevelt Fund does not offer a scintilla of evidence in its opposition papers
 10 to support the existence of such claims.

11 Because the Commission's case is nearing completion, it should go forward without
 12 any danger of delay or interference by the bankruptcy court. The Court should therefore withdraw
 13 the reference to the bankruptcy court until a final judgment is entered in this case, the residence is
 14 sold, and the sale proceeds are distributed to investors. At that time, the Court can consider sending
 15 back to the bankruptcy court any remaining bankruptcy issues.

16 **II. The Federal Securities Law Issues Support Mandatory Withdrawal.**

17 In its Opposition Papers, the Roosevelt Fund correctly acknowledges that mandatory
 18 withdrawal is appropriate when the case involves "consideration of both title 11 and other laws of
 19 the United States regulating organizations or activities affecting interstate commerce." Opposition
 20 Brief at 3 (quoting 11 U.S.C. § 157(d)). The Roosevelt Fund then makes, however, the wholly
 21 unsupported argument that "most of the issues ... in the Bankruptcy Cases are issues of bankruptcy
 22 law which are completely independent of the federal securities law." *Id.*

23 In reality, the federal securities laws permeate the bankruptcy proceedings in the same
 24 way that they permeate this enforcement case. The Roosevelt Fund does not identify any bankruptcy
 25 law principle that entitles it to repayment of the monies it transferred to defendants. The Roosevelt

26
 27 2 During the case management conference in this case, counsel for the defendants indicated that
 28 his clients did not anticipate contesting liability or the amounts owed to many of the investors.
 The Court therefore set a two-day remedies trial for August 13 and 14, 2007, to decide any relief
 issues that the parties are unable to agree upon.

1 Fund does not, for example, have a liquidated claim in the form of a promissory note from
2 defendants. Additionally, the Roosevelt Fund has not shown that it is entitled to repayment if
3 defendants simply lost the money through unsuccessful investments.

4 Instead, to obtain repayment, the Roosevelt Fund must allege that it is the victim of
5 misconduct by defendants. That misconduct involves a violation of the anti-fraud provisions of the
6 federal securities laws through defendants' misrepresentations regarding the hedge funds.
7 Additionally, that misconduct involves a violation of the investment advisor provisions of the federal
8 securities laws through defendants' breaches of their fiduciary duties. As a result, the Roosevelt
9 Fund's bankruptcy claims are based upon the same federal securities laws claims that have been
10 alleged by both the Commission and the Roosevelt Fund in this Court.

11 For similar reasons, the supposed fraudulent conveyance claims necessarily involve
12 federal securities issues. If an investor had a bona fide claim under the federal securities laws to the
13 repayment of his investment by defendants, that investor may argue that he received the payment
14 from defendants in good faith, and not fraudulently. This necessarily means that any fraudulent
15 conveyance proceeding must, in the first instance, consider the other investors' rights under the
16 federal securities laws. Given the central role that the federal securities laws will play in determining
17 the investors' claims and defenses in the bankruptcy proceedings, the mandatory withdrawal of the
18 bankruptcy reference is therefore appropriate.

19 **III. Securities Laws Issues Support Permissive Withdrawal of the Reference.**

20 In arguing that permissive withdrawal of the reference is inappropriate, the Roosevelt
21 Fund contends that the Court must consider whether the "the matter" is core or non-core. Opposition
22 Brief at 4. Notably, after raising that point, the Roosevelt Fund fails to specify why any "core"
23 bankruptcy issues are supposedly present or controlling.

24 Whether these proceedings involve core or non-core bankruptcy issues is inapt in any
25 event. First, as demonstrated above, the central issues in the bankruptcy proceedings involve the
26 investors' rights and claims under the federal securities laws against defendants; by their nature such
27 securities laws claims are clearly non-core.

28 Second, the factors for determining whether permissive withdrawal should be granted

1 have been highlighted, in this Circuit, by the *Security Farms v. International Brotherhood*, 124 F.3d
 2 999 (9th Cir. 1997), opinion:

3 In determining whether cause exists, a district court should consider the
 4 efficient use of judicial resources, delay and costs to the parties, uniformity
 5 of bankruptcy administration, the prevention of forum shopping and other
 6 related factors.


7 *Id.* at 1008.

8 These factors favor withdrawal of the reference. The Roosevelt Fund does not
 9 controvert the point made in the Commission's moving papers that there is a substantial overlap
 10 between the proposed bankruptcy actions and this action – which would lead to inefficiencies and
 11 raise the possibility of conflicting determinations. Commission's Motion at 6-8. Additionally, this
 12 Court is far more familiar with the operative facts than the bankruptcy court; this action has been
 13 before this Court since November 2006.

14 The Roosevelt Fund also fails to dispute that the involuntary bankruptcy proceedings
 15 constitute improper forum-shopping. As stated in the Commission's opening papers, those
 16 bankruptcies threaten to end run this Court's asset freeze by diverting the proceeds from the sale of
 17 Edward Ehee's residence to the bankruptcy court so that those funds could be used for the litigation
 18 costs of unsubstantiated fraudulent conveyance claims. *See* Commission's Motion at 7-8.

19 The Roosevelt Fund also argues that withdrawal of the reference of an entire case is
 20 "incredibly uncommon." Opposition Brief at 4. But this motion should be decided on the basis of
 21 the facts and the law, not the frequency with which this type of situation arises. There are certainly
 22 prior instances where a district court withdrew the reference of an entire bankruptcy case. *E.g.*,
 23 *Security Farms, supra*, 124 F.3d at 1009 (affirming withdrawal of reference of several bankruptcy
 24 proceedings). The Court should therefore grant the Commission's motion.

25 DATED: June 14, 2007

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